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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1949

No. 363

LYNCHBURG TRAFFIC BUREAU,

Petitioner,

vs.

THE UNITED STATES OF AMERICA, ET AL.

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF VIRGINIA

JURISDICTIONAL STATEMENT

This suit was filed on January 21, 1949, in the United States District Court for the Western District of Virginia, by the Lynchburg Traffic Bureau, against the United States of America. The purpose of the suit was to have a special court of three-judges to hear our petition and then to set aside, annul and forever enjoin the Interstate Commerce Commission from enforcing the provisions of its report and orders of November 10, 1948 and January 3, 1949, entered in a proceeding before the Interstate Commerce Commission, known as Docket 29677, Minimum Rates on

Rail Traffic Between the North and the South, reported at 273 I. C. C. 33. The reasons these orders should be set aside, annulled and the enforcement of them forever enjoined, we believe, are: that the rate-making power of the Interstate Commerce Commission has been apparently unintentionally used so as to build up one community (Danville) or territory (Southern) and to destroy another community (Lynchburg) or territory (Official) by giving Danville more favorable terms and conditions on which to purchase transportation service than the terms and conditions given Lynchburg; that the orders of the Commission allowing the carriers authority to maintain minimum rates nullify the provisions of Sections 1, 2, 3, and 4 of the Act (49 USCA); and that the orders permit the carriers to give Danville *Free Transportation Service* and require Lynchburg to pay for transportation service based on the actual distance each shipment moves. As an example, on shoes, prior to September 1, 1940, the rate was 120 cents per 100 pounds at Danville and 111 cents per 100 pounds at Lynchburg to and from New York and, on September 1, 1940, the rating was reduced to Danville but not changed to Lynchburg. This reduction in rating disturbed the rate competitive relationship between Danville and Lynchburg. The decision of the Commission, which was sustained by the Court, allows the carriers to charge Danville the rate to Lynchburg of 111 cents as the minimum rate at Danville, thus permitting Danville to purchase transportation service on more favorable terms and conditions than those on which Lynchburg must purchase the same transportation service. Equal terms and conditions would permit Lynchburg and Danville to purchase transportation service on shoes for 111 cents at Lynchburg and 120 cents at Danville, or 78 cents at Lynchburg and 84 cents at Danville, to and from New York. Consequently, when Danville purchases

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transportation service at the price that Lynchburg pays (111 cents), then Danville is purchasing transportation service on more favorable terms and conditions than those given Lynchburg.

The jurisdiction of the three-judge district court rests upon the provisions of the Acts of Congress approved June 25, 1948 (c. 646, 62 Stat. 869) Sections 2284 and 2325, Title 28, United States Code, "Judiciary and Judicial Procedure".

The decision of the Interstate Commerce Commission here considered, which holds, by permitting minimum rates to be maintained, that Danville is entitled to purchase transportation service on more favorable terms and conditions than those on which Lynchburg is entitled to purchase the same transportation service is a decision of the kind that is to be heard and determined by a district court of three judges. Consequently, the decision of the court in this proceeding is the kind of a decision from which an appeal to the Supreme Court is allowed by Section 1253, Title 28, United States Code, "Judiciary and Judicial Procedure". The jurisdiction of the Supreme Court of the United States over this suit on appeal is allowed by Section 1253, Title 28, United States Code, as that section provides:

> "Except as otherwise provided by law, any party may appeal to the Supreme Court from an order granting or denying, after notice and hearing, an interlocutory or permanent injunction in any civil action, suit or proceeding required by any Act of Congress to be heard and determined by a district court of three judges."

This is a suit that must be heard and determined by a district court of three judges, as Section 2325, Title 28, United States Code, provides as follows:

> "An interlocutory or permanent injunction restraining the enforcement, operation or execution, in whole or

in part, of any order of the Interstate Commerce Commission shall not be granted unless the application therefor is heard and determined by a district court of three judges under Section 2284 of this title."

Then, Section 2101, Title 28, United States Code, provides, in part, as follows:

"(a) A direct appeal to the Supreme Court from any decision under sections 1252, 1253, and 2282 of this title, holding unconstitutional in whole or in part, any act of Congress, shall be taken within thirty days after the entry of the interlocutory or final order, judgment or decree. * * *

"(b) Any other direct appeal to the Supreme Court which is authorized by law, from a decision of a district court in any civil action, suit or proceeding, shall be taken within thirty days from the judgment, order or decree appealed from, if interlocutory, and within sixty days of final."

The decision and order appealed from were rendered and entered on the 30th day of June 1949 and the petition for leave to take an appeal, with assignment of errors, was filed on August 26, 1949, or filed within the sixty day period allowed by Section 2101 (b), Title 28, United States Code.

The district court, we believe, erred as a matter of law in refusing to grant the prayer of plaintiff for an order annulling, setting aside and forever enjoining the report and orders of the Interstate Commerce Commission dated November 10, 1948 and January 3, 1949, on the ground that said orders, as plaintiff alleges, are unlawful and contrary to the Interstate Commerce Act (49 USCA).

The decision of this court in this proceeding should be reviewed by the Supreme Court of the United States, as this proceeding involves, among other things, the question of whether or not the Commission can authorize the car-

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riers to establish and maintain rates that create unjust discrimination and undue preference; can use its rate-making power so as to build up one community or territory and destroy another community or territory; can make rates so as to give one community or territory more favorable treatment with respect to transportation charges than it accords another community or territory; can give more favorable terms and conditions of transportation to one community or territory and withhold the same kind of terms and conditions from another community or territory on the premises that the more favorable terms and conditions can be granted by use of minimum rates under Section 15(1), Title 49 USCA; and whether or not the Commission can, before or after the carriers have published rates and charges that violate Sections 1, 2, 3, and 4 of Title 49 USCA, grant the carriers authority that has the force and effect of repealing Sections 1, 2, 3, and 4 of Title 49 USCA.

Then, too, we believe, since the decision permits more favorable terms and conditions of transportation to be given Danville than those given Lynchburg on the same articles, that the decision may be contrary to the principle announced in the decision of the Supreme Court in Union Pac. R. Co., et al. v. United States, et al., 313 U. S. 450, (462), where the Court, in part, said:

> "Violation of the Commerce Act through receipt of advantage is to be treated by actual results not by intention. Any and all means to accomplish the prohibited end are banned. * * * In fact favoritism which destroys equality between shippers, however brought about, is not tolerated."

The decision appealed from, we believe, is contrary to law, as that decision sustains the use of minimum rates to accomplish the purpose set forth by the Commission in

Minimum Rates on Hay, etc., (152 I.C.C. 355 (358)), as follows:

> "*The necessity for minimum-rate* provisions in connection with rates on hay and allied commodities seems to be as clear as it is in the case of class rates generally, * * * *in order to avoid wholesale fourth-section departures over direct routes for which there could be no justification and to prevent undue prejudice to and preference of points on and near the border.*" (Emphasis added.)

But that kind of use of minimum rates may be contrary to the proper use of minimum rates mentioned by the Supreme Court in New York v. United States, 331 U. S. 284 (346), where the Court, in part, said:

> "These cases, to be sure, recognize the power of the Commission so to fix minimum rates as to keep in competitive balance the various types of carriers and to prevent ruinous rate wars between them."

Consequently, since minimum rates of the kind here considered have been used to give Danville more favorable terms and conditions on which to purchase transportation service than those given Lynchburg, minimum rates of the kind here considered are unlawful as they are not used to keep in competitive balance the various types of carriers and to prevent ruinous rate wars between them—but, on the contrary, they have been here used so as to build up one community (Danville) and to destroy another community (Lynchburg) by permitting Danville to purchase transportation service on more favorable terms and conditions than those on which Lynchburg must purchase the same transportation service. Following the decision herein, suggests that Lynchburg should have the rates applicable to a point 64 miles north of Lynchburg.

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The decision appealed from is contrary to law, as it sustains the proposition that the Commission can use its power to fix minimum rates so as to make minimum rates supersede the provisions of Sections 1, 2, 3, and 4, Title 49 USCA.

The decision appealed from is contrary to law, as it sustains the proposition that the Commission can use minimum rates to avoid fourth-section departures for which departures there could be no justification and to prevent undue prejudice to Lynchburg and undue preference to Danville, which departures, preference and prejudice, were created by the more favorable terms and conditions of transportation given Danville and withheld from Lynchburg.

The report of the Commission which is here involved specifically shows that the rates and charges the carriers maintained were rates and charges that violated Section 4 of Title 49 USCA, and created undue prejudice and undue preference, in violation of Sections 2 and 3 of Title 49 USCA (See 152 I.C.C. 355 (358)) because at page 41 of 273 I. C. C. 33, the following appears:

> "• • • but when comparing so-called mismatched classes, for example, third class in Southern and first or second in Official, minimum charges on less-than-carload and any-quantity traffic, as well as on carload traffic, are necessary."

The use of minimum rates, as the reports of the Commission conclusively show (152 I.C.C. 355 (358)) is to avoid the fourth-section departures and to prevent the undue preference and prejudice that were created by the more favorable terms and conditions of transportation given to Danville and withheld from Lynchburg. The carriers created the fourth-section departures and created the undue preference and prejudice when they gave Danville more

favorable terms and conditions on which to purchase transportation service and withheld those terms and conditions from Lynchburg. As an example, when the carriers established a third class rating on shoes moving between points in Official territory and Danville, Virginia and established a first class rating on the same shoes moving between Lynchburg, Virginia and points in Official territory, resulting in a rate of 84 cents from New York to Danville (Danville is a point 64 miles south of Lynchburg) and a rate of 111 cents from New York to Lynchburg (Lynchburg is an intermediate point to Danville), they gave Danville an advantage over Lynchburg. Therefore, the establishment of the more favorable Classification rating of third class on shoes moving to Danville and withholding from Lynchburg the same third class rating on shoes moving to Lynchburg is the reason for "minimum rates" because class-for-class the rates are lower to Lynchburg than to Danville to and from points in Official territory, so with mismatched ratings to Danville and Lynchburg, departures from the provisions of the Act (49 USCA) are created, for which departures the minimum rates here authorized are used to continue in effect the more favorable treatment given Danville. As an example of the fact that Lynchburg is entitled to lower rates, class-for-class, than Danville, the rates between New York and Danville are: first class 120 cents; second class 102 cents; and third class 84 cents; and between New York and Lynchburg, the rates are: first class 111 cents; second class 94 cents; and third class 78 cents. Therefore, minimum rates are unnecessary when Lynchburg is permitted to purchase transportation service upon the same terms and conditions as the terms and conditions on which Danville purchases transportation service.

The decision appealed from permits Danville to purchase transportation service on shoes moving from New York at

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a third class rating, resulting in a rate of 84 cents, and it withholds from Lynchburg the third class rating, which rating would permit Lynchburg to purchase that service at a rate of 78 cents. Consequently, a third class rating to Lynchburg would permit Lynchburg to purchase transportation service on shoes moving from New York on the same terms and conditions as those on which Danville purchases the same transportation service; or a first class rating to Danville, resulting in a rate of 120 cents and a first class rating to Lynchburg resulting in a rate of 111 cents, would permit Danville to purchase transportation service on shoes moving from New York on the same terms and conditions as those on which Lynchburg purchases the same transportation service. There is a difference of 6 cents in favor of Lynchburg over Danville in the third class rate from New York to Danville of 84 cents and from New York to Lynchburg of 78 cents; and there is a difference of 9 cents in favor of Lynchburg over Danville in the first class rate from New York to Danville of 120 cents and from New York to Lynchburg of 111 cents. Consequently, if Lynchburg and Danville are permitted to purchase transportation service on the same terms and conditions, then there never will be any need for minimum rates. It is clear, therefore, that the use of minimum rates denies Lynchburg her natural advantage of 6 cents in the third class rate and 9 cents in the first class rate. But, rather than to permit Lynchburg to purchase transportation service on the same terms and conditions as those on which Danville purchases transportation service, the orders and report of the Commission and the decision appealed from authorize the carriers to apply at Danville the rate to Lynchburg as the minimum rate at Danville, which destroys the natural rate competitive relationship between Lynchburg and Danville. Consequently, since Lynchburg cannot purchase transportation service, mile-for-mile or class-for-class or rating-for-rating, on the same

terms and conditions as those on which Danville purchases the same transportation service, the decision appealed from may be contrary to the principle announced in the decision of the Supreme Court in *Howitt* v. *U. S.*, 328 U. S. 189, where at page 193, the following appears:

> "The Interstate Commerce Act imposes the same duty on ticket sellers and clerks of common carriers as that imposed on railroad officers and other employees to treat all the public alike as to terms and conditions of transportation."

Consequently, holding at Danville the rate to Lynchburg of 111 cents as the minimum rate at Danville, when Lynchburg is entitled, class-for-class, to a lower rate due to distance than Danville is entitled to, is denying Lynchburg transportation upon the same terms and conditions as the terms and conditions upon which Danville purchases the same transportation. Therefore, applying the rate to Lynchburg as the minimum rate at Danville is contrary to the authority vested in the Commission by the provisions of the Interstate Commerce Act, as more favorable terms and conditions of transportation are given Danville than the terms and conditions given Lynchburg.

This proceeding, as we have tried to briefly point out in the paragraphs that precede this paragraph, is a proceeding that the Supreme Court of the United States ought, by all means, to review, notwithstanding what the appellees may contend, as in this proceeding is involved the question of whether or not the Interstate Commerce Commission can use its rate-making power in prescribing minimum rates or otherwise, so as to build up one community or territory and to destroy another community or territory by giving one community transportation service on more favorable terms and conditions than the terms and conditions on which the other community is required to purchase the same

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transportation service; whether or not the Commission can use its power to fix minimum rates so as to have the direct affect of repealing or superseding the provisions of Sections 1, 2, 3, and 4 of the Act, Title 49 U. S. C. A.; whether or not the Commission can authorize the carriers to disregard the provisions of Sections 1, 2, 3, and 4 of the Act (49 U. S. C. A.) by establishing and maintaining minimum rates; and whether or not the Commission can give the carriers authority to avoid fourth-section departures and to disregard undue prejudice and preference created by giving one community transportation service on more favorable terms and conditions than the terms and conditions on which the other community must purchase transportation service. The comments herein made show that the questions involved in this proceeding *are substantial.*

W. G. Burnette,
Counsel for Appellant.

APPENDIX

IN THE DISTRICT COURT OF THE UNITED STATES FOR THE WESTERN DISTRICT OF VIRGINIA, LYNCHBURG DIVISION

Civil Action No. 203

LYNCHBURG TRAFFIC BUREAU, *Plaintiff*,

versus

UNITED STATES OF AMERICA, INTERSTATE COMMERCE COMMISSION, et al., *Defendants*

(Argued May 5, 1949. Decided —— —, ——)

Before Dobie, Circuit Judge and Paul and Barksdale, District Judges

W. G. Burnette, Attorney for Plaintiff.

Edward Dumbauld, Herbert A. Bergson and Howard C. Gilmer, Jr., Attorneys for the United States.

J. Stanley Payne, Daniel W. Knowlton, Attorneys for Interstate Commerce Commission.

D. Lynch Younger, Attorney for Railroads.

DOBIE, *Circuit Judge:*

The present civil action was brought by the plaintiff, Lynchburg Traffic Bureau, a Virginia corporation representing business firms in the City of Lynchburg in transportation matters, to have set aside and annulled certain orders and reports of the Interstate Commerce Commission (hereinafter referred to as the Commission). A special court was constituted, as required by 28 U. S. C. A. §§ 2284, 2325, to hear and determine the action.

A brief review of the history and background of the orders here involved is necessary for an understanding of their significance.

The geographical area east of the Mississippi River is divided into two major rate territories. What is known as official Classification (or Official) Territory embraces

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that territory east of the Mississippi and north of a line which follows the Ohio River from its mouth to Cincinnati and then follows the lines of certain railroads through West Virginia and Virginia to Norfolk, Virginia. Southern Classification (or Southern) Territory embraces the area east of the Mississippi and south of Official Territory.

The class rate structures applicable within each of these two territories were prescribed by the Commission, following extensive investigations, in Eastern Class Rate Investigation, 164 I. C. C. 314 (1931), and Southern Class Rate Investigation, 100 I. C. C. 513 (1928). With respect to traffic moving intraterritorially, the class rate of the particular territory through which the traffic moves, governs. But since the rates and the classifications of various commodities applicable within the two territories are different, there is presented the problem of effecting a fair and equitable adjustment of rates on traffic moving interterritorially. The orders of the Commission presently under attack were designated to effect, on such traffic, a more equitable adjustment than has hitherto existed.

Prior to the orders in question, the rates on interterritorial traffic were determined, generally, as follows: Certain so-called "hold-points" (i.e., points in Official Territory through which interterritorial traffic would pass) were designated on the border between Official Territory and Southern Territory. Cities, then, in Southern Territory were grouped around each of these hold-points. For example, for traffic moving from a particular section in Official Territory to Danville, Virginia, Lynchburg, Virginia, is the hold-point; and Danville, for such traffic, is said to be in the "Lynchburg Group." Basically, the rates on interterritorial traffic were those prescribed for the Southern Territory, but it was provided that, where these rates were below the level of the Official Territory rates applicable between the extreme point in Official Territory and the hold-point, the latter rate would govern. In other words, the Southern Territory rates governed interterritorial shipments with a qualification that the Official Territory rate to the hold-point should provide a minimum.

Prior to 1940, this basic adjustment was applicable to both carload and less-than-carload traffic. During the nineteen-thirties, however, the southern rail carriers had suffered from rising competition from the motor carriers. In order to meet this competition, all ratings on less-than-carload traffic above third-class were reduced to that level, and the minimum rate provision on interterritorial traffic was made inapplicable to less-than-carload freight.

Since these reduced ratings were applicable only within Southern Territory and interterritorially, the result was that on less-than-carload interterritorial traffic the through rates between many points in Southern Territory and points in Official Territory were, in numerous instances, less than the rates between the intermediate points in Official Territory. This, of course, resulted in departures from 49 U. S. C. A. § 4(1), which Fourth Section Departures were authorized by the Commission in Fourth Section Order 14001.

The obvious inequities of this adjustment led to negotiations and investigations following which the Commission approved the orders here under discussion. These orders are contained in a report by the Commission. Minimum Rates on Rail Traffic Between the North and the South, 273 I. C. C. 33 (Nov. 10, 1948). Very briefly, the orders provide a new organization of hold-points and groupings designed to bring the hold-points into closer harmony with the service routes over which traffic actually moves between north and south. And (the chief point of contention) the new orders make applicable as a minimum on interterritorial traffic (both carload and less-than-carload) the rate between Official Territory origin or destination and the appropriate hold-point at the border. Inasmuch as the Southern ratings (reduced to meet motor carrier competition) are still lower with respect to many articles than the ratings in effect in Official Territory, the minimum rate provision determines the charges on many interterritorial shipments into and out of cities in Southern Territory close to the border. This, of course, results in blanketing the rates applicable throughout these defined "Groups" in Southern Territory at the level of the rate to the particular border point chosen as a hold-point for that group.

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An example may best serve to highlight plaintiff's objection to these orders. Danville, Virginia, is located within Southern Territory approximately 65 miles south of Lynchburg, Virginia, in Official Territory. The first-class rate on traffic between New York and Lynchburg is 111 cents; between New York and Danville, 120 cents. Shoes, clothing, dry goods, etc., are classified first-class in Official Territory, but, due to the exceptions to the Southern Classification effected in 1940, these items are all classified third-class in Southern Territory. The third-class rate from New York to Danville is 84 cents. Since New York and Lynchburg are both in Official Territory, the first-class ratings and the resulting rate of 111 cents are applicable to shipments of these commodities between those cities. Since, however, the Southern ratings govern interterritorial shipments, the rate on shipments of these commodities between New York and Danville would be the third-class rate of 84 cents, were it not for the minimum provision of the present orders. That provision raises the rate to and from Danville to the rate of 111 cents applicable to and from Lynchburg.

Although this adjustment is obviously more equitable than that which preceded these orders, plaintiff complains that due to the application of the same rate to both Lynchburg and Danville, Danville is receiving 65 miles of "free transportation services."

The plaintiff's position, essentially, presents a frontal attack on the practice of establishing a uniform blanket, or group, rate applicable to many points within a given area. This is true since, due to the minimum rate provision of the new orders, there are no instances in which a *lesser* charge is made for carriage over a greater distance. We are therefore not concerned with violation of the "long-haul, short-haul" clause of the Interstate Commerce Act, 49 U. S. C. A. § 4 (1). Plaintiff's complaint is that an *equal* charge is made for carriage over a greater distance.

The Commission has repeatedly approved the application of blanket rates over wide areas. Extreme examples are the rates on lumber and on citrus fruit, with respect to which blankets have been established throughout the area east of the Mississippi and, in some instances, throughout

even larger areas. In its decision in Commodity Rates on Lumber and Other Forest Products, 165 I. C. C. 561, 565, the Commission said:

> "It is hardly necessary to say that the practice of grouping points of origin or destination and applying the same rate to all points within the group is an outstanding characteristic of the rate structure of the country. This practice has existed from the very beginning and in principle meets with general approval. Such groupings may be actuated in large part by commercial and competitive reasons, as in the case of the great citrus fruit and lumber blankets, or it may be resorted to merely for convenience and simplicity of rate publication. In a multitude of cases we have recognized its necessity and desirability."

The legality of the use by the Commission of such blanket rates was upheld by the Supreme Court in Illinois Commerce Commission v. United States, 292 U. S. 474, 486 (rehearing denied 293 U. S. 628), where the Court held:

> "Treating an area as a unit and applying a uniform blanket or group rate within it, as is the common practice with respect to switching rates, is within the competence of the Commission."

See, also, St. Louis S. W. Ry. Co. v. United States, 245 U. S. 136.

The plaintiff contends that the use of minimum rates is unlawful per se. This proposition, as thus broadly stated, clearly cannot be sustained, running—as it does—directly counter to the express grant to the Commission, in Section 15 (1) of the Act, 49 U. S. C. A. § 15 (1), of power to "determine and prescribe * * * the maximum or minimum, or maximum and minimum, to be charged" whenever the Commission finds the rate then in effect to be unreasonable, unjustly discriminatory, unduly preferential or prejudicial, or otherwise in violation of any provision of the Act. Under this section the Commission can fix the ceiling above which the carrier may not go, and the floor below

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which it may not go, or it may prescribe the precise rate to be charged.

The Commission has repeatedly exercised the minimum rate power, and its authority in this respect has been fully sustained by the courts. New York v. United States, 331 U. S. 284, 343-349; Youngstown Sheet & Tube Co. v. United States, 295 U. S. 476; Jefferson Island Salt Mining Co. v. United States, 6 F. (2d) 315.

The plaintiff argues that the use of minimum rates is here made necessary by the preferential rates resulting from the approval by the Commission of different classifications (ratings) within Official and Southern Territories. Its argument proceeds that these mismatched ratings are, themselves, unlawful; hence the Commission has no power merely to *prevent* (by the use of minimum rates) any evils which flow from such mismatched ratings but must *remove* the mismatching by equalizing the ratings themselves. This argument, even if otherwise valid, must certainly fall if its major premise (i. e., that the use of different ratings in different territories is unlawful) is false. We think this premise is clearly erroneous.

It would undoubtedly be desirable from many standpoints and, at least apparently, the most equitable practice to require all carriers to adhere to a single mileage scale with the rates increased proportionately to an increase in distance. The Commission has recognized this general proposition in Consolidated Freight Classification, Docket 28310 (1939), and ordered uniformity in classification ratings throughout the country. Even in that proceeding, however, it was fully understood that carriers must still be free to publish exceptions to the classification for application within particular rate territories or on particular lines of railroads. This power to establish classification exceptions is necessary so that rate structures may be adjusted to reflect the needs of commerce in particular areas rather than purely nation-wide considerations. See New York v. United States, *supra* at 300, 305, 350. The very facts which led to the exceptions here involved (the severe competition in the south between the rail and motor

carriers) serve to emphasize the need for flexibility in the system.

There clearly is no express prohibition against the use of minimum rates anywhere in the Act. We can declare their use, here, unlawful only if the resulting rates are in some fashion violative of the Act. The plaintiff asserts that the resulting rates violate Sections 1 through 4 of the Act, 49 U. S. C. A. §§ 1-4, and the National Transportation Policy declared by Congress. 54 Stat. 899, 49 U. S. C. A. notes preceding §§ 1, 301, 901, 1001.

Section 1(5) of the Act requires rates to be just and reasonable; Sections 2 and 3(1) denounce relations of rates which result in unjust discrimination or undue prejudice, or preference, against, or in favor of, persons or places.

While at first glance it must appear unreasonable, discriminatory, etc., to charge the identical rate to both Lynchburg and Danville, despite the 65 miles additional haul to the latter, in stressing the comparison of rates between these two near-border cities the plaintiff overlooks the fact that the problem facing the Commission was that of effecting an adjustment on traffic passing between two major rate territories, each involving many states. In any solution to this problem, mathematical niceties are impossible and border-line discrepancies are perhaps inevitable. Even were we to consider de novo the reasonableness of the rates established in the Commission's orders, we should certainly do so in the light of this highly complex problem and not in the light, merely, of the resulting rates between two border cities.

Our function, however, is much more limited. Whether or not rates prescribed by the Commission are unreasonable, unjustly discriminatory or unduly prejudicial, in violation of Sections 1, 2, and 3 of the Act, have repeatedly been held to be questions, not of law for determination by the courts, but of fact within the cognizance of the Commission. Board of Trade of Kansas City v. United States, 314 U. S. 534, 546, 548; Rochester Telephone Corp. v. United States, 307 U. S. 125, 139-140; Pennsylvania Co. v. United States, 236 U. S. 351, 361; Illinois Cent. R. R. v. I. C. C., 206 U. S. 441, 455. Although the Commission's determination is of course subject to judicial review, that review does not con-

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sist of trial de novo of these facts, Tagg Bros. v. United States, 280 U. S. 420, 443; Keller v. Potomac Elec. Co., 261 U. S. 428, 442; but (so far as is here material) consists merely of an inquiry to determine whether or not the Commission's findings are supported by substantial evidence. Assigned Car Cases, 274 U. S. 564, 580-581; Virginian Ry. Co. v. United States, 272 U. S. 658, 663; Western Chemical Co. v. United States, 271 U. S. 268, 271; United States v. L. & N. R. R., 235 U. S. 314, 320. A reading of the Commission's report in the case before us, 273 I. C. C. 33, indicates substantial evidence to support the Commission's findings, and we can find no violations of Sections 1, 2 or 3 of the Act.

The language of Section 4 of the Act upon which plaintiff apparently relies is: "It shall be unlawful for any common carrier * * * to charge or receive any greater compensation * * * for a shorter than for a longer distance over the same line or route in the same direction, the shorter being included within the longer distance * * *." 49 U. S. C. A. § 4(1). And yet, as we have already pointed out, the new orders result in not a single instance where a *greater* charge is made for a shorter than for a longer distance.

The Commission has uniformly held that Section 4 does not prohibit charging to a more distant point the *same* rate as that to an intermediate point. Birmingham Traffic Bureau v. St. Louis-S. F. Ry. Co., 118 I. C. C. 756; Idaho Commercial Clubs, v. Oregon Short Line R. R. Co., 18 I. C. C. 562; Milk Producers' Protection Assn. v. Delaware, L. & W. R. Co., 7 I. C. C. 92. Our attention has been called to no case in which either the Commission or the courts have held that such a rate contravenes Section 4.

It is true that Section 4(1) provides (following the long-haul, short-haul clause just quoted): "* * * but this shall not be construed as authorizing any common carrier * * * to charge or receive as great compensation for a shorter as for a longer distance * * *." Senator Cullom, on January 10, 1887, in explaining this provision to the Senate, stated:

> "The declaration * * * does not in terms prohibit the charging as much for a shorter as for a longer

distance, but simply withholds the legislative sanction from the making of such a charge. This qualifying clause negatives the inference that might possibly be drawn from the language of the section without these words, namely: that an equal charge for a shorter distance is authorized by inference because only a greater charge is prohibited. This qualification, therefore, leaves the question of whether an equal amount can be charged for the shorter distance to be determined by the provisions of the bill to which I have already referred, requiring all charges to be reasonable, and forbidding the giving of an unreasonable preference or advantage to any particular locality." 18 Cong. Rec. 485.

It is thus clear that the charging of the same rate to both Lynchburg and Danville is not violative of Section 4 of the Act, and that section leaves it to the Commission to determine whether such a rate is unreasonable or otherwise violative of other portions of the Act.

There is no merit in plaintiff's contention that the Commission's orders are contrary to the National Transportation Policy declared by Congress. Nothing in that broad, general declaration of policy prohibits the establishment of minimum rates found by the Commission, upon an ample record, to met the several substantive tests of the Act.

The plaintiff suggests an alternative method of integrating the rate structures of these two contiguous territories, which method, plaintiff urges, is far more equitable than that approved by the Commission. But we have indicated that we find substantial evidence supporting the findings upon which the Commission's orders are based, and that those orders are in no wise violative of the Act; and there our inquiry must stop. The selection of one of several alternative solutions to such a problem as this, none of these solutions involving any violations of the Act, is solely within the competence of the Commission. See Ayrshire Collieries Corp. v. United States, 335 U. S. 573, 593. We therefore decline the opportunity to point out why we think the Commission's solution, contained in the present orders, is in fact far more desirable than that suggested by plaintiff.

BLEED THROUGH—POOR COPY

The plaintiff's petition to set aside and annul the Commission's orders is denied and the plaintiff's action is dismissed.

Dismissed.

I concur.

(Signed) A. M. Dobie,
U. S. Circuit Judge.

I concur in the foregoing opinion June 14, 1949.

(Signed) John Paul,
District Judge.

I concur.

(Signed) A. D. Barksdale,
U. S. Dist. Judge.

[seal]

June 17, 1949.

A Copy. Teste:
(S.) Louis H. Price,
Deputy Clerk.

Endorsed: Filed June 30th, 1949.

IN THE DISTRICT COURT OF THE UNITED STATES FOR THE WESTERN DISTRICT OF VIRGINIA

Held at Lynchburg on the 30th day of June, 1949

Before Honorable A. M. Dobie, United States Circuit Judge; Honorable John Paul, United States District Judge; Honorable A. D. Barksdale, United States District Judge

No. 203 Civil

Lynchburg Traffic Bureau, *Plaintiff*

versus

United States of America, Interstate Commerce Commission, et al., *Defendants*

This action having been considered upon the complaint and upon the answers of the named defendants and the answers of intervening defendants and upon the exhibits

submitted with said complaint and answers and upon the arguments of counsel of all parties in interest.

And it being the opinion of the court, for reasons which have been stated in the original opinion filed herein, that the prayer of said complaint to set aside and annul certain orders and a report of the Interstate Commerce Commission dated the 10th day of November, 1948 and the 3rd day of January, 1949, is without merit.

Now, therefore, it is Ordered that the said prayer of said complaint be denied and that this action be, and the same is hereby, dismissed at the cost of the plaintiff.

To which action of the court in dismissing said complaint the plaintiff by counsel, objected and excepted for reasons fully stated to the court.

And the clerk of this court shall certify and mail copies of this order together with a copy of the court's opinion to counsel of record in this action.

Enter.

(Signed) ARMISTEAD M. DOBIE,
United States Circuit Court.
(Signed) JOHN PAUL,
United States District Judge.
(Signed) A. D. BARKSDALE,
[SEAL.] *United States District Judge.*

A Copy. Teste:
(S.) LOUIS H. PRICE,
Chief Deputy Clerk.

BLEED THROUGH—POOR COPY